

CERTIFICATE OF SERVICE
I, certify that a copy of the foregoing document to which this certificate is attached was delivered to the attorneys of record of plaintiff, defendant, on the 4th day of February 2003.

UNITED STATES ATTORNEY
BY: *[Signature]*

CC TO JUDGE PM

Chief Judge Coughenour

[Signature] FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

FEB 04 2003 PM

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY



CR 02-00421 #00000070

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MALIK ALMALIKI,
aka ALI AL MALIKI,
aka MALIK MALIKI,

Defendant.

NO. CR02-421C

GOVERNMENT'S
RESPONSE TO MOTION
SUPPRESS STATEMENTS

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Assistant United States Attorneys Francis J. Diskin and Tessa M. Gorman, for said District, responds to defendant ALMALIKI's motion to suppress statements he made during in-person and telephonic interviews with law enforcement agents as follows:

BACKGROUND

On February 20, 2002, law enforcement agents executed a federal search warrant at ALMALIKI's Roanoke, Virginia apartment. The defendant was present during the search and consented to an interview. An additional telephonic interview was conducted the following day. For the convenience of the Court, a redacted copy of the report prepared by the agent who conducted the interview, and previously provided to defense counsel, is attached hereto at Appendix "A."

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ARGUMENT

While an evidentiary hearing will be required to establish the voluntariness of ALMALIKI's admissions (see 18 U.S.C. § 3501), it is the government's position that Miranda warnings were unnecessary prior to this non-custodial interview.

In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation, but


the ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. California v. Beheler, 463 U.S. 1121, 1125 . . . (1983) (per curiam) (quoting Mathiason, 429 U.S. at 495
Stansbury v. California, 511 U.S. 318, 322 (1994).

The undersigned expects any hearing in this matter would establish neither a formal arrest or any restraint on the freedom of ALMALIKI's movements of the degree associated with a formal arrest.

Because the underlying facts will need to be presented under oath and subjected to cross examination, the undersigned respectfully suggest that the Court may wish to order additional briefing by both parties at the conclusion of such a hearing.

DATED this 4th day of February, 2003.

Respectfully submitted,
JOHN McKAY
United States Attorney


FRANCIS J. DISKIN
Assistant United States Attorney


TESSA M. GORMAN
Assistant United States Attorney

Appendix A

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

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R E P O R T O F I N V E S T I G A T I O N
C O N T I N U A T I O N

2. CASE NUMBER

3. REPORT NUMBER: 002

INTERVIEWS OF MALIK AL-MALEKI: FEBRUARY 20 and 21, 2002

Based on information provided by the SAIC/Seattle, a federal search warrant was obtained on February 19, 2002 for AL-MALEKI'S residence, 2623 Westover Avenue, Apartment 1, Roanoke, Virginia. On February 20, 2002, Special Agents of the RAIC/Norfolk and ATF/Roanoke executed the warrant with the assistance of Roanoke (Virginia) police officers. AL-MALEKI was present at the residence. RAIC/NF SS/A William R. Anderson advised AL-MALEKI that he was not under arrest. AL-MALEKI agreed to an interview and volunteered information regarding his involvement with AFCI (Agent's note: On February 21, 2002, AL-MALEKI provided additional information relative to this interview by telephone. Details of both interviews are contained herein).

AL-MALEKI stated that approximately three to four years ago he was introduced to Hussein AL SHAFEI over the telephone by a friend named LLOYD, a mutual acquaintance. AL-MALEKI could not remember LLOYD'S last name. AL-MALEKI said he had advised LLOYD that he wanted to send some money to family members in Iraq, and LLOYD told him that he could do so through AL SHAFEI. AL-MALEKI indicated that he knew it was illegal to send money directly to Iraq from the United States. After conducting a few of these transactions, AL SHAFEI recruited AL-MALEKI to collect funds from others in the Roanoke area, who needed to send money to Iraq. AL-MALEKI said he agreed to assist AL SHAFEI, and for the last three to four years he has collected money from approximately 35 to 50 individuals. AL-MALEKI stated that he deposited the money into a Bank of America bank account as instructed by AL SHAFEI.

AL-MALEKI was shown a spiral notebook found in his apartment. AL-MALEKI stated that he owned the book, and explained that his notations contained therein identified the individuals he collected money from, the amounts, the individuals to whom the money was to be delivered to, etc. AL-MALEKI said he communicated this information to AL SHAFEI by telephone after making deposits

DEPARTMENT OF THE TREASURY
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REPORT OF INVESTIGATION
CONTINUATION

of the funds into the account. AL-MALEKI was presented a series of deposit slips which were discovered during the search. AL-MALEKI identified these as receipts for funds he deposited on behalf of his clients. These deposit slips were for Bank of America account 67467019. AL-MALEKI stated his belief that this account was in AL SHAFEI'S name.

AL-MALEKI admitted that he collected a two-dollar fee from these individuals for each \$100 he sent to AL SHAFEI. AL-MALEKI added that AL SHAFEI charged these individuals a five-dollar fee for each \$100 he delivered to Iraq on their behalf. AL-MALEKI stated that AL SHAFEI sent the money to associates in intermediary countries such as Jordan, who arranged for final delivery to Iraq. AL-MALEKI admitted that AL SHAFEI'S international system involved a form of Hawala. AL-MALEKI could not provide any further details regarding AL SHAFEI'S money delivery/Hawala method.

AL SHAFEI advised AL-MALEKI approximately a month ago that law enforcement authorities in Seattle had confronted him about the money deliveries to Iraq. AL SHAFEI assured AL-MALEKI that he (AL SHAFEI) was not in trouble. However, AL SHAFEI instructed AL-MALEKI to stop collecting the money from his clients in Roanoke. AL SHAFEI advised AL-MALEKI to provide the bank account number to his clients and tell them that they could continue sending money to Iraq by personally depositing their funds into this account. AL-MALEKI stated that he has provided the account number to all of his clients. AL-MALEKI stated his belief that these individuals are depositing their money into this bank account, and are communicating their wishes regarding delivery of the funds to AL SHAFEI by telephone.

AL-MALEKI asserted that he has discontinued collecting funds from anyone for any reason. AL-MALEKI added that he does not know anyone who has previously or is now assisting AL SHAFEI or anyone to collect money from individuals in the United States for delivery to Iraq or any other foreign country.

AL-MALEKI related that he emigrated to the United States from Iraq approximately five years ago. He initially lived in Kentucky and then moved to Michigan for a few months. AL-MALEKI has resided in Roanoke for over four years. AL-MALEKI provided his Virginia drivers license number 402517335 as a means of identification.